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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Interconnection and Resale)	CC Docket No. 94-54
Obligations Pertaining to)	
Commercial Mobile Radio Services)	

To: The Commission

SUPPLEMENTAL COMMENTS OF
SOUTHERN COMPANY

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Southern Company ("Southern"), by its attorneys and pursuant to Section 1.415 of the Federal Communications Commission's rules, submits these additional comments regarding the Second Report and Order and Third Notice of Proposed Rulemaking ("Second R&O") released August 15, 1996 in the above-captioned proceedings.¹

I. Introduction

In the Second R&O the Commission adopted rules requiring manual roaming for cellular, broadband Personal Communications Service (PCS) and covered Specialized Mobile Radio (SMR) providers. The Commission also sought comment on whether it should include automatic roaming service between CMRS providers. By Public Notice dated December 5, 1997 the

¹ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, 61 Fed. Reg. 43977 (August 27, 1996). Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks, Public Notice, DA 97-2558, released December 5, 1997.

Commission invited interested parties to provide updated comments on the Commission's automatic roaming proposals.

Southern, an electric public utility holding company, operates through its subsidiary, Southern Communications, a unique digitally-enhanced, wide-area Commercial Mobile Radio System ("CMRS") in the Southeastern U.S.^{2/} Southern's CMRS system is the largest centrally switched state-of-the-art digital 800 MHz SMR system in the world, with an authorized service area of more than 120,000 square miles. The system provides internal communications for Southern's five operating companies as well as for external customers. Currently, Southern has 316 base station sites constructed and in operation. Southern anticipates having almost 500 sites to provide robust service and to meet its commercial demands.

As stated in its comments and reply comments in this proceeding, Southern continues to support automatic roaming requirements for all CMRS providers, implemented on a service by service basis. Although technological limitations make inter-service automatic roaming (such as between cellular and SMR customers) infeasible, intra-service roaming (SMR to SMR) between providers using the same technology is cost-efficient, practicable and in the public interest. Developments since the Commission last received comments in these proceedings demonstrate both the importance and feasibility of automatic roaming requirements for the benefit of consumers in the wireless communications marketplace, particularly as applied to covered SMRs.

^{2/} In late December of 1994, the Securities and Exchange Commission approved the formation of Southern Communications Services, Inc., a wholly-owned subsidiary of Southern, organized to provide land mobile radio service both to the affiliated operating companies and to the public on a commercial basis. The Southern Company, Memorandum Opinion and Order, authorizing Acquisition of Non Utility Subsidiary and Related Transactions, Holding Co. Act Release No. 35-26211, December 30, 1994. (SEC Order).

Since the inception of the Commission's ruling on roaming, there has been dramatic consolidation in the SMR industry. These market conditions mean that voluntary roaming agreements are not likely to occur. For example, on December 8, 1997 the Commission concluded auctions of the Upper 200 channels in the 800 MHz band.³ The results of this auction—an auction designed to provide, among other things, an opportunity for small business entities to participate in the 800 MHz SMR service—demonstrate the overwhelming market position of a single entity, Nextel Communications, Inc. (Nextel), and the inability of any other participant to acquire commercially significant amounts of spectrum. Nextel's market position was further concentrated by the Wireless Telecommunication Bureau's Order, released October 24, 1997 granting transfer of control of Pittencrieff Communications' authorizations to Nextel.⁴ In that Order, the Bureau reversed its own previous analysis of the SMR industry, finding that SMR constituted a separate market from other CMRS services and that Nextel had such a dominant, market distorting position, as to threaten competition.⁵ Nextel's position in this proceeding has been consistent with its dominant market position: it does not support any roaming requirement for SMRs. It claims its position is based on technical infeasibility of roaming. However, 1997 saw an agreement between Nextel and Clearnet of Canada to allow roaming between the two companies' SMR systems using Motorola's iDEN technology. Southern believes that these developments make it imperative that the Commission's original decision to require automatic roaming be upheld.

³ 800 MHz SMR Auction Closes, Public Notice, DA 97-2583 December 9, 1997.

⁴ In Re: Applications of Pittencrieff Communications and Nextel Communications for Consent to Transfer of Control, Memorandum Opinion and Order, released October 24, 1997 CWD No. 97-22 ("Pittencrieff Order").

⁵ Pittencrieff Order at ¶ 63.

II. Comments

In the Second R&O the Commission stated that “roaming capability may be a key competitive consideration in the wireless marketplace . . .”⁶ The Commission went on to state “We believe that, given the availability of sufficient capacity, a carrier would not have either the incentive or ability to unreasonably deny manual roaming to an individual subscriber or to unreasonably refuse to enter into an automatic roaming agreement with another CMRS provider, because some other carrier in its service area would be willing to do so.”⁷

The cornerstone of the Commission’s analysis of how best to promote the public interest with regards to roaming was the Commission’s conclusion that, within a “substantially competitive” market,⁸ providers would not have “incentive or ability to unreasonably deny”⁹ automatic roaming agreements to other CMRS providers. Indeed, the Commission’s general policy is to allow “market forces, rather than regulation, to shape the development of wireless services.”¹⁰ In balancing the costs of an automatic roaming requirement versus the declared public interest in roaming, the Commission determined additional information on the ability of the market to provide roaming was needed. The record now establishes, however, that market forces will not guarantee a competitive wireless communications market for SMR services; an automatic roaming requirement is therefore essential to protect consumers. This is consistent

⁶ Second R&O at ¶ 11.

⁷ Id. at ¶ 32.

⁸ Id. at ¶ 32.

⁹ Second R&O at ¶ 32.

¹⁰ Id. at ¶ 27. See also S. CONF. Rep. No. 104-230, 104., 2d Sess. 1(1996).

with the Telecommunications Act of 1996, which supports a “pro-competitive, deregulatory national policy framework.”¹¹

A. Nextel’s Dominant Market Position Creates Both an Incentive and an Ability to Unreasonably Deny Consumers Roaming Options

Nextel’s dominance of the Upper 200 channel auction, combined with the Wireless Telecommunications Bureau’s own analysis of Nextel’s market distorting power in the 800 MHz SMR industry, offer ample proof of Nextel’s dominant market position and a concomitant inability of market forces to protect competition generally and in particular to provide for a market solution to the issue of automatic roaming. In this case, therefore, the furtherance of Congress’ “pro-competitive” goals for the U.S. telecommunications industry mandates narrowly tailored requirements for automatic roaming between covered SMRs. Market forces in a market so dominated by Nextel are simply inadequate to ensure the automatic roaming agreements necessary for robust competition; an automatic roaming requirement is, under these circumstances, pro-competitive.

Nextel itself unwittingly alludes to the basis for an automatic roaming requirement in its analysis of the Commission’s resale requirements: “the Commission initially imposed resale obligations in a cellular marketplace that, by regulatory mandate, consisted of only two licensees per market – one of which had been provided a significant regulatory created headstart.”¹² In many areas of the country, the covered SMR market consists of only one licensee, Nextel. This market dominance has been solidified by the tremendous regulatory advantage given Nextel in

¹¹ See also S. Conf. Rep. No. 104-230, 104., 2d Sess. 1(1996).

¹² Nextel Communications Inc. Petition for Reconsideration or Clarification, CC Docket No. 94-54, filed August 23, 1996.

the Upper 200 channel auction, as confirmed by the auction results.¹³ As the Bureau recognized in the Pittencrieff Order, SMR constitutes a market distinct in important respects from other CMRS. Within this distinct market, Nextel exercises market power to such an extent that market forces are insufficient to protect consumers. Likewise, mandatory roaming requirements are necessary to ensure consumers the convenience and flexibility that roaming offers.

Without the requirement for automatic roaming agreements, Nextel can exert its market dominance to deny its customers the ability to roam onto Southern's system or for Southern's customers to roam onto Nextel's system in those areas adjacent to Southern's 120,000 square mile service area. Nextel's shrill reaction to Southern's support for an automatic roaming requirement demonstrates Nextel's interest in preventing covered SMR users from enjoying the benefits of roaming. Nextel states "[Southern's] opposition is a blatant expression of its strategy to construct a small regional iDEN SMR system yet provide its customers nationwide service by riding on the back of Nextel's billion dollar investment . . ."¹⁴ Nextel's claims that Southern is "sitting back . . . investing little to no additional money in facilities and networks"¹⁵ are misrepresentations made in a bald effort to protect Nextel's continued subversion of efficient market operation. Were Nextel subject to competitive market conditions in the SMR industry, it would be interested in supplementing its own spotty coverage¹⁶ with Southern's comprehensive 120,000 mile service area, rather than denying SMR users the ability to roam in adjacent markets. It is inherently unreasonable, and therefore contrary to the public interest, to expect any other covered SMR to be able to secure for customers the benefits of roaming in a market so dominated by Nextel.

¹³ RCR, "New Nextel Auction Licenses Cover 97 Percent of Nation," December 15, 1997.

¹⁴ Nextel Communications Inc. Reply to Opposition of Southern Company and AT&T Wireless filed February 24, 1997 at page 7.

¹⁵ Id.

B. Technical Feasibility of Inter-SMR Roaming

Nextel argued that it was unable to provide manual roaming to non-Nextel subscribers. Nextel declared to the Commission that “non-Nextel mobile subscribers are not registered in Nextel’s database and are not using equipment that it is designed for network wide operations without significant system modifications. For these reasons Nextel’s inability to provide manual roaming to non-Nextel subscribers does not violate Sections 201 and 202 of the Communications Act.”¹⁷

Notwithstanding these and other alleged inabilities, Nextel was somehow able to enter into a roaming agreement with Clearnet Communications, Inc.¹⁸ Clearnet and Southern use the same Motorola iDEN technology. This agreement belies Nextel’s assertions in filings with the Commission that roaming with its system is not technically feasible; Nextel’s claim of an “inability to provide manual roaming to non-Nextel subscribers” is nothing more than anti-competitive posturing.

Nextel also claims that it lacks sufficient capacity to permit roaming on its system. Nextel’s claims as to capacity fail in light of Nextel’s overwhelming success in the Upper 200 channels auction. As reported in Land Mobile Radio News coverage of the Nextel/Clearnet roaming agreement, because the radios are digital, “the service is protected against account fraud.”¹⁹

Only when faced with a Commission requirement for an automatic roaming agreement will Nextel enter into a mutually beneficial automatic roaming agreement with a U.S. based competing SMR company that will guarantee consumers the benefits of automatic roaming.

¹⁶ Pittencrieff Order at ¶ 48.

¹⁷ Nextel Communications Inc. Reply to Oppositions of Southern Company and AT&T Wireless Page 6.

¹⁸ Land Mobile Radio News, “Clearnet Offers U.S. Roaming with Less Hassle,” July 25, 1997.

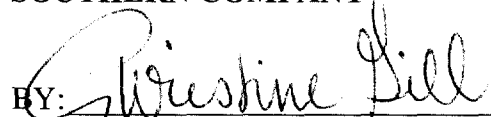
Although Nextel alleges that an automatic roaming agreement would entail significant costs, obviously these costs are commercially reasonable given the evidence of the Clearnet agreement. By narrowly tailoring automatic roaming requirements for covered SMR's, the Commission can ensure that costs are minimized.

III. Conclusion

The Commission has been wisely reluctant to impose an automatic roaming requirement on the basis of an incomplete record. That record, however, is no longer incomplete in regard to covered SMR systems. Roaming between providers in the same service using the same technology is technically feasible and in the public interest, and should therefore be available to consumers. The FCC's own analysis has demonstrated, however, that within the covered SMR industry there exist sufficient market distortions to deny consumers the benefit of competition. In this case, negotiations cannot be expected to produce a market driven result; the FCC must take action to preserve the benefits of automatic roaming for wireless telecommunications consumers in the covered SMR market. For these reasons, Southern respectfully requests that the Commission maintain its automatic roaming requirement for all covered SMR systems.

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Dated: January 5, 1998

¹⁹ Id.

CERTIFICATE OF SERVICE

I hereby Certify that on this 5th day of January, 1998, I caused true and correct copies of the Supplemental Comments of Southern Company to be served via hand delivery on:

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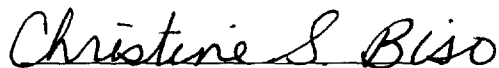
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